

REMARKS

Applicants filed a Request for Continuing Examination on 04 August 2009 to secure entry of their Reply and Amendment under 37 C.F.R. § 1.116 mailed 28 May 2009, entry of which was denied in the Advisory Action mailed 11 June 2009, and to correct informalities in the Rule 116 Reply.

The present paper is filed to present still further claim amendments and to present additional argument in support of their traversal of the claim rejections.

By the present paper, claim 1 is amended and claim 20 is cancelled. Claims 1, 3 - 6, 8 - 17, 22, 24, 25, 31 - 41, 44, and 45 are in the Application and under examination. Entry of the claim amendments and reconsideration of the Application are respectfully requested.

The Claim Amendments:

Claim 1 is amended to incorporate the limitations of claim 20 that previously depended from claim 1. Support for the claim amendment can be found, for example, in the claims as filed.

Claim Rejections Under 35 U.S.C. § 103:

Claims 1 - 6, 8 - 17, 20, 24, 25, 31 - 41, and 44 - 45 were finally rejected as allegedly obvious over Randall A. Baker and Rebecca R. Krueger, United States Patent 5,902,629 (Baker et al.) in view of Brendan J. Donnelly et al., United States Patent 5,334,407 (Donnelly et al.). Applicants respectfully traverse.

The Present Invention:

The present invention as defined by independent claim 1 is drawn to a method for producing modified flours or modified starch-containing products from a ground or comminuted raw material product. The method must include at least six steps. The material is preconditioned in a preconditioner and agglomerated in an agglomerator. The preconditioner and the agglomerator each have a mixing chamber above and

connected to an action chamber, each of the chambers having a separate rotor shaft having radially protruding conveying elements for moving the intermediate product in the mixing chamber and in the action chamber, which rotor shafts extend along the respective chambers and which rotate along their longitudinal axis. The shaft of the mixing chamber is driven at a rate of about 50 rpm to 900 rpm and the shaft of the action chamber is driven at a rate of about 5 rpm to 30 rpm.

The Prior Art:

Baker et al. discloses a method for processing grain comprising the steps of precooking grain by a low moisture process, preconditioning by hydrating to a total moisture content of 10-40% in a ribbon blender or a preconditioning cylinder, extruding the hydrated material, cutting the extruded material with a rotating knife, drying the cut extrudate and grinding the product. The ground product may be agglomerated by feeding into an agglomerator and adding water and/or steam and, optionally, a binder such as starch, modified starch, *See Office Action of April 2, 2009, page 2.*

Donnelly et al. disclose a method for forming couscous using a preconditioner or conditioning cylinder having an entrance and an exit and whereas the cylinder contains twin laterally juxtaposed counter-rotating shafts equipped with paddles to advance raw material and to mix material with the steam and water. *See Office Action of April 2, 2009, page 3, second paragraph; and Donnelly et al. at column 5, lines 9-16).*

The Claimed Invention vs. The Prior Art:

As noted by the Office, Baker et al. do not disclose a preconditioner with separately driven mixing and action chambers and an agglomerator with separately driven mixing and action chambers having: the structure as claimed in the present application, the residence time in mixing and action chambers as claimed in the present application, the filling capacity as claimed in the present application, and the pressure and temperature in the mixing and action chambers required in the several the present claims. *See Office Action of April 2, 2009, page 2, last paragraph to page 3, first*

paragraph.

The preconditioning steps and agglomeration steps according to independent claim 1 of the present application require separate and discrete first and second substructures or subassemblies, i.e. mixing and action chambers. In particular, the shaft of the mixing chamber is driven at a rate of about 50 rpm to 900 rpm and the shaft of the action chamber is driven at a rate of about 5 rpm to 30 rpm.

Baker et al. neither teaches nor suggests a preconditioner or an agglomerator with separate and discrete mixing and action chambers with separate and discrete shaft speeds, as noted by the Office. See Office Action of April 2, 2009, page 2, last paragraph.

Combining Donnelly et al. with Baker et al. cannot cure this defect. Donnelly et al. discloses a preconditioner with a single chamber having a single axle with two juxtaposed counter-rotating shafts. The single chamber of the pre-conditioner is divided into different sections immediately adjacent to each other in series. Hence, Donnelly et al. cannot possibly suggest that the shaft of the mixing chamber is driven at a different rate than the shaft of the action chamber according to currently amended independent claim 1, because the twin laterally juxtaposed counter-rotating shafts extend along the whole single chamber of the preconditioner, i.e. the different sections of the preconditioner (Donnelly et al., Fig. 4).

Furthermore, the Office acknowledges that Baker et al. does not disclose the residence time, the temperature, the pressure and the rotation speed in the preconditioner as claimed. The Office, however, alleges that one skilled in the art can readily determine such variables through “routine experimentation”. Applicant respectfully disagrees. Applicant respectfully submits that “routine optimization” of a variable is obvious only if the variable is recognized as results effective. The Office has not presented any argument why the skilled artisan of the day would have known that the particular combination of variables would be “results effective”. It is thus respectfully requested that the Office provide an Examiner’s Affidavit under 37 CFR

§104 (d)(2) to support the conclusion that such determination would obviously be achieved through routine experimentation.

Conclusion:

Applicant respectfully submits that, based on the foregoing amendments and remarks, independent claim 1 and, *per force*, all claims depending therefrom are now in condition for allowance, which allowance is earnestly solicited. If, in the opinion of the examiner, a telephone conference would advance prosecution of the application, the examiner is invited to call the undersigned attorneys.

Respectfully submitted,

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